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Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether there is any objection to issuing instructions to the Chief Inspector under section 44(2) of the Factories Act, 1934 to refer all cases except those of public utility concerns to Government for instructions.

Under sub-section (2) of section 44 of the Factories Act, 1934, the power vesting in the Chief Inspecor to make orders exempting from restrictions is subject to the control of the Provincial Government. "Control" as a noun means "power to check or restrain; superintendence; management" (see Iyer's Law Lexicon p. 242). It follows, therefore that the orders passed by the Chief Inspector under section 42(2) shall be subject ~~ok~~ to the supervision of Government, that is to say, can be revised by Government. To require the Chief Inspector to refer all cases except those of public utility concerns to Government for instructions would be tantamunt to asking the Chief Inspector to pas orders in conformity with the instructions of Government. This, in other words, would mean Government itself passing orders in all such cases through the Chief Inspector and thereby nullifying the latter's statutory powers. Consequently it would not be legally feasible to issue instructions to the Chief Inspector as proposed..

O.C. ID/-D.V.W.
Remembrancer of Legal Affairs.

U.O.R. to P & S.D. No. 1928, 26th February 1947.

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The vie taken by Dy. Secy.(P.& S.D.) is correct.

2. Under section 10(5) of the Factories Act, 1934, ~~Xxxxx~~ Government can appoint such public officers as it thinks fit to be additional Inspectors for all or any of the the purposes of this Act, within such local limits as it may assign to them respectively. Mr-Waterfield, Chairman of the Industrial Condition Enquiry Committee being a public officer., can be apponted additional Inspector under section 10(5) of the Factories Act, but not the other two members of the Committee who are not public officers (see section 2(17) of the Civil Procedure Code), nor can they be notified as public officers for purposes of the Factories Act. Even the appointment of Mr. Waterfield as additional Inspector under section 10(5) would not entitle him (i) to enter any industrial premises (ii) to [redacted] call for relevant documents or (iii) to summon or examine witnesses on oath for the purposes of the Enquiry Committee since theexercise of such power would not be for the purposes of the Factories Act, 1934.

O.C. Id/-P.M.L.
dt/-14/6/

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 6195 dated he 14th June 1947.

V.VK. 9/5/1956/ 4C.

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The term "accident"as used in the explanation is not capable of the construction put thereon by the Adjudicator. In thefirst place the syntax makes it clear that it is not a qualification adjectival or otherwise of the word "leave". The explanation contemplates interruption brought about (1) by sickness (2) accidnet or (3) authorised leave not exceeding ninety days in theaggregate for all three. It is, therefove, obvious that the word "accident"cannot be interpreted to mean accidental leave. The term when read in context with section 30 contemplates accident occurring in thefactory ; which causes bodily injury whereby any person injured is preventedform resuming his work in the factory; and the widermeaning denoting an event that takes places without one's foresight or expectation has no relevance in the context. The Adjudicator's view that interruption of service by accidant in the Explanation to section 49B includes accidantal or unauthorised leave is not, therefore, correct.

O.C. Id/-P.ML.
dt/-16/6

Remembrancer of Legal Affairs.

U.R. to P, &S.D. No. 6221, dated the 16th June 1947.

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Chapter IV of the Factories Act, 1934, relates to restrictions on working hours of adults, while Chapter IV-A deals with holidays with pay. Section 49-G in Chapter IV-A empowers Government to exempt factories from the provisions of this Chapter. The exemption granted under section 49-G would include exemption from the rules made under the provisions of Chapter IV-A. Rule 7 in Part III of the Factory (Holidays) Rules is one of such rules. Consequently the factories, which have applied for exemption under section 49-G, would, on such exemption being granted, be entitled to exemption from rule 7, but both from rule 6 which falls under the provisions of Chapter IV. The view taken by the P. and S.D. is correct.

O.C. Id/-n.V.W.
Remembrancer of Legal Affairs.

U.R. to P. and S.D., No. 7386, dated the 18th July 1947.

V.VK. 9/6/56/ 40.

ubmitted .

2. In Govt. of India , Dept . of Labour, letter No. -4035,dated the 4th June 1946 it is stated that continuous service of a worker preceding the date of commencement of Chapter IV-A , viz, 1st January 1946, should be ncluded in thecomputation of the period of 12 months ontinuous service referred to in sub-section (1) of ection 49B of the Factories Act, 1934, In other words , f an 1st Jan. 1946 a worker has completed a period of twelve months continuous service in a factory, he would e entitled under section 49B to a prescribed number of olidays during thetwelve months comprising theyear 946. The Ahmedabad Millowners Association has contenued hat the amendment made to he Factories Act by ActIII of 945 is not retrospective and the e fore workers cannot be ligible or entitled to any benefit for the days worked In 1945. The Association therefore proposes to file a test case to get the issue clarified by a judicial decision. D.D. P.& S.D. states that before a decision is taken on thequestion by a test case the R.L.A.'s opinion may be obtained on the interpretation of section 49B.

3. Sub-section (1) of section 49B of the Factories Act,1934 provides that every worker who has completed a period of twelves monthes continuous service in a factory ~~period~~ shall be allowed, during the subsequent period of twelve months, holidays for a period of ten or, if a child fourteen consecutive days, inclusive ofthe day ordays, if any, on which he is entitled to a holidy under sub-section(1) of section35, This subsection only provides that a worker who has completed a period of 12 months. continuous service shall be allowed the relevant holidays during thesubsequent period of 12 months. This the provisions of the sub-section are prospective and not retrospective in operation as pointed out by the A'bad Millowners Association. It therefore a worker has

completed 12 months service on 1st Jan. 1946 he would be entitled to the leave prescribed under the ---- --- sub-section . If the provisions of the sub-section are not interpreted this the sub-section would be ineffective for about a year even after the commencement of Act III of 1945, The view taken by the Govt. of India, Labour Deptt. letter No . L-4035, dt. 4-6-1946 appears therefore to be correct.

Sd/-P.S.Nadkarni.
dt 10/7/

V.VK.
9/5/567 4C.

Office of the R.L.A.

Seen and returned .

2. The view taken by the Government of India, Department of Labour , letter No.L-4035, dated the 4th June 1946 , is correct.

O.C. Sd/-D.V.W.
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 7424 , dated the18th July 1947.

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Office of the R.L.A.

A cotton mill in this Province has remained closed for over 3 months owing to breakdown in the machinery and the workers were laid off without pay during the period, Several of these workers were entitled to holidays with pay under Chapter IV A of the Factories Act, 1934, for service during the years 1945 and 1946. It is reported that these workers have now requested the managment of the mill to give them pay, in lieu of the holidays, as they were laid off without pay for a considerable period and the management have no objection to this course provided the Factory Department consents. The Commissioner of Labour doubts if this could be legally allowed. The R.L.A. is requested to advise whether by virtue of sections 49B (2) and 49D, the employer after paying the workers in lieu of the Holidays, i.e. whether the workers can contract out of the benefit given by the said sections .

"Every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and the protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy" (cf. Maxwell on Interpretation of Statute, 8th Edition , p.334). Sub-section (1) of section 49B of the Factories Act, 1934 , provides that every worker who has completed a period of 12 months continuous service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten days, etc. Sub-section (2) provides that if a worker fails in any one such period of twelve months to take the whole of the holidays not taken by him shall be added to the holidays to be allowed to him under sub-section (1) in the succeeding

period of twelve-months, so however that-the-~~total~~ total number of-days-holidays-which may be carried forward to a succeeding period shall not exceed ten etc. 'Under ~~x~~ sub-section (3) if a worker is discharged by his employer before he has been allowed the holidays the employer has to pay him the amount payable under section 49C in respect of the holidays i.e. the daily average of his wages as defined in thePayment of Wages Act, 1936(pl.see section 49C) Section 49D provides that a worder who has been allowed holidays under section 49B shall, before his holidays begin, be paid half the total pay due for he period of holidays.

There provisions are mandatory, and theworkers will be entitled to holidays with pay. It is true that these provisions are intended o pretest the workers in their private capacity but a breach therof ap ears to infringe thepublic polic-, for under clause (g) of section 60 a factory would be liable to a penalty for any contravention of ~~s~~section 49B,49C or 49D. Agreements to stifle prosecutions are a well known class of thosewhich thecourts refuse to enforce on the ground that they are opposed to public policy. In the present case, if the workers are allowed to contract out of benefit, it would amount to stifling proseaution under clause (g) of section 60 andas such illegal . Consequently theemployer after paying the workers in lieu of holidays would still be liable to carry forward theholidays.

O.C. Id/-D.V.W.
dt/-
Remembrancer of Legal Affairs.

U.R. to P.S.D. No. 8099 , dated the 6th August 1947.

V.VK. 9/5/56/

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Office of the R.L.A.

Involutary Unemplo m nt

Factories Act, 1934.

The interruption in service by intermittent periods of involuntary unemployment notexceeding thirty days shall under the explanation to section 49 of the Factories Act, 1934, be treated as not affecting thetwelve months' continuous service entitling theworker to his annual holidays under section 49-B(1) . In the present case the interruptio in service can undoubtedly be classed as involuntary unemployment and if that period is not in excess of thirty days the worker would be entitled to the bebefit of continuous services for purposes of his holidays If any part of that period of involuntary unemployment is now to be treated as holidays it would result in the curtailment of therights of worker undersextion 49-B . Rurther, on principle the suggestio is unsound since involuntary unemployment brought about by themanagement would every time be converted into holidays and the purpose of the Act defeated. A man cannot be said to have a holiday when he is forcibly laid off. The worker does not bebefit by the proposed arrangement; he can go on a holiday now or if he does not wish to have a holiday, he can carry it forward for ten days . In the ircumstance it appears that the proposal of the Joint Secretary, Politi and Services epartment, though intended to afford some relief to worker, would not be legally feasible.

O.C.Id/-P.M.L.
dt/-22/9/47

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 9461 ,dated the 24th September 1947.

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Office of the R.L.A.

whether loom workers can be deemed to be workers".

Factories Act, 1934 and (English) Factories Act 1937.

"Worker" as defined in section 2(h) of the Factories Act, 1934 , means a person employed whether for wages of not, in any manufacturing processetc. The word "employed" signifies both the act of doing a thing and thebein, under contract or orders to do it (See Black's Law Dictionary, page 657). If loom owners come together and rul their own looms under one roof they would no doubt be working thier looms but being under no contract or order to work such looms they would not be deemed to be workers employed within the meaning of section 2(h) and the provisions of the Act would not be applicable to them. Attention is invited to the definition in the English Factories Act, 1937, which also defines the expression "Factory" to include "premises in which persons are employed in manual labour " and, nevertheless, provides in section 151(4) as follows:--

> "Any workplace in which , with thepermission of or under agreement with the owner, or occupier , two or more persons carry on any work which would constitute the workplace a factory if thepersons working therin were in theemployment of the owner or occupier , shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace not being a tenement factory or part of a tenement shall apply as if the owner or occupier of theworkplacewere the occupier of the factory and thepersons working therein were persons employed in the factory".

We may usefull adopt that precedent which supports the above interpretation.

Q.C. Id/-P.M.L.

Remembrancer of Legal Affairs.

U.O.R. to P.& S.D. No. 10691 , 7th November 1947.

V.VK. 9/5/56/

4C.

Office of the R.I.A.

Claims for 10 days Leave by workers in addition to leave under the Bombay Civil Services Rules.

Factories Act, 1934, Chapter IV -A- Sections 49A & 49B.

It appears that theleave rules in appendix XLIV-B Parts I and II of the Bombay Civil Services Rules which apply to all classes of employees in Government Central Press, Yeravda Press and Photozince Press, Poona, provide more generous benefits than those forwhich Chapter-4-A- of the Factories Act, 1934, makes provision. However , theleave provided for in the B.C.S. Rules cannot be claimed as of right . Discretion is reserved to the authority empowered to grant leave, to refuse or revoke leave at any time according to the exigencies of public service . This means that the workers may or may not get any leave during any one year or two. Section 49-B of the Factories Act which applies to the employees in these presses is, however, mandatory, According tosub-section (1) of that section, every worker who has completed a period of 12 months service, shall be allowed during the subsequent period of 12 months holidays for a period of 10 days etc. The question raised for the consideration of theP.L.A. is whether these employees can claim besides their leave under the B.C.S.Rs., another 10 daus leave with pay under the Factories Act, 1934.

2. Chapter 4A of the Factories Act, 1934, deals with the question of granting holidays with pay to the workers. Sub-section (2) of section 49-A in that Chapter provides:

"The provisions of this chapter shall not operate to the prejudice of any rights to which a worker may be entitled to under any other.

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enactment or under the terms of any award , agreement or contract of ser ice ."

Prejudice means injury, loss or damnification of anything which places a party in a moreunfavourable position , A person is prejudiced in thelegal sense when legal right is invaded by an act complained of or his pecuniary interest is directly affected by a decree or judgment. The provisions of the B.C.S. Rs .Have statutory effect under section 241 of the Government of India Act , 1935. Consequently, the benefits which the employees in the Government Presses are entitled to under the B.C.S.Rs . in the respect of leave and other concessions are clearly saved by virtue of section 49A(2) of the Factories Act . As observed by the Hon'ble Dr. Ambedkar, Law Member in the Legislative Assembly, while moving the Factories Second Amendment Bill, the effect of section 49A(2) is "to save the rights to any holidays with pay that might accrue to a workman other wise than under theAct such as holidays as may be permissible under an award or an agreement or a contract or acontract of service ." It follows therefore, that every worker employed in the Government Presses would be entitled to holidays for a period of 10 days as provided by section 49-B(1) in addition to the leave provided for in the B.C.S.Rs . The view taken by P& &S.D. at p.9 ante is correct.

O.C. Sd/-P.M.L.
dt/-15/12/

Remembrancer of Legal Affairs.

U.O. to P.& S.D. No. 11892 , dated the 10 the December 1947.

V.VK. 9/5/1956/